

REMARKS

This is a complete response to the outstanding Office Action mailed April 3, 2008. Claims 75, 76, 78, 79, 81, and 82 have been amended herein. No new matter has been added. Upon entry of the enclosed claim amendments, claims 74-82 remain pending in the present application.

I. Response to Claim Objections and Rejection - 35 USC § 112

Applicant has amended claims 75, 76, 78, 79, 81, and 82 to correct informalities as suggested by the Examiner. Applicant respectfully requests reconsideration and withdrawal of claim objections.

II. Response to Claim Rejections Based on Obviousness

In the Office Action, claims 74-82 have been rejected under 35 U.S.C. § 103(a) as being unpatentable over Beckle et al. (U.S. Patent No. 5,153,909, hereinafter referred to as "Beckle") in view of Oliphant et al. (U.S. Patent 4,881,261, hereinafter referred to as "Oliphant"). Applicant respectfully traverses this rejection.

Applicant urges that the Examination lacks the evidence,

facts, or findings sufficient to establish a *prima facie* case of obviousness. To establish a *prima facie* basis for obviousness, the Examiner bears the burden to show the factual basis of the rejection. *In re Warner*, 379 F.2d 1011, 389 U.S. 1057 (1968). Such basis must be both factually sufficient and reasonable.

The Applicant respectfully submits that neither Beckle nor Oliphant discloses, teaches, or suggests all elements of the rejected claim for at least the reasons that follow. The Office's current analysis relies on hindsight in selecting excerpts of Beckle and piecing them together in order to construct Applicant's claimed invention. The Office's analysis selects the excerpt, "Connections of incoming calls to or outing calls from the agent positions are established in the switching system." The Office's analysis then uses hindsight to suggest that there would be queues of outbound calls and queues of inbound calls and that these queues would be mingled together. The aspects are not factually demonstrated in Beckle and cannot be gleaned by the mere fact that the switching system of Beckle can handle incoming calls and outgoing calls. The Office has not met a *prima facie* burden to show the factual basis of the rejection. As previously refuted in the Office's withdrawn analysis, Oliphant does not teach

controlling the processing of one type of communication (e.g. inbound communications) based on statics particularly derived for a different type of communication (e.g. outbound communications). Therefore Oliphant does not cure the defect with regard to Beckle. Consequently, for at least these reasons claim 74, 77, and 80 overcome the above section 103 rejection.

A critical step in analyzing the patentability of claims pursuant to section 103(a) is casting the mind back to the time of invention, to consider the thinking of one of ordinary skill in the art, guided only by the prior art references and the then-accepted wisdom in the field. Close adherence to this methodology is especially important in cases where the very ease with which the invention can be understood may prompt one "to fall victim to the insidious effect taught is used against the teacher." The black letter law statements by Judge Linn in *In re Kotzab*, 217 F.3d 1365 at 1369, 55 USPQ2d 1313 at 1316 (Fed. Cir. 2000).

Beckle does not teach or suggest controlling the processing of one type of communication (e.g. inbound communications) based on statics particularly derived for a different type of communication (e.g. outbound communications). Beckle adds nothing new to the analysis previously overcome in the rejection of

Oliphant. The Office's current analysis is looking further back in time and has become a victim to hindsight and fails to cast the mind back to the time of invention. The fact that a switch may handle outbound calls and inbound calls doesn't suggest that one skilled in the art at the time of the invention would have queues of outbound calls and queues of inbound calls and that these queues would be mingled together.

The Applicant also respectfully submits that since claims 75, 76, 78, 79, 81, and 82 depend on independent claims 74, 77 and 80, respectively, claims 75, 76, 78, 79, 81, and 82 contain all limitations of independent claims 74, 77 and 80, respectively. Since independent claims 74, 77 and 80 should be allowed, as argued herein, pending dependent claims 75, 76, 78, 79, 81, and 82 should be allowed as a matter of law for at least this reason. In re Fine, 5 U.S.P.Q.2d 1596, 1608 (Fed. Cir. 1988).

III. Prior Art Made of Record

The prior art made of record has been considered, but is not believed to affect the patentability of the presently pending claims.


CONCLUSION

In light of the foregoing amendments and comments and for at least the reasons set forth above, Applicant respectfully submits that all objections and rejections have been traversed, rendered moot and/or accommodated, and that presently pending claims 74-82 are in condition for allowance. Applicant has responded to all of the Examiner's requests. Favorable reconsideration and allowance of the present application and the presently pending claims are hereby courteously requested. The examiner is invited to telephone the undersigned, Applicant's attorney of record, to facilitate advancement of the present application.

Respectfully submitted,

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